Single Bench (3)

IN THE HIGH COURT OF CHHATTISGARH AT

BILASPUR

Writ Petition NO. 402 /2004

PETITIONER : Ku. Laxmi Navrang, D/o. R.L. Navrang, aged about 51 years
Occupation-Lecturer (Hindi)
Govt.Higher Secondary School
Korba (C.G.)
R/o. Purani Basti Korba (C.G.)

P.R. No. A/05/04 Presented by Shri Satya Kam dated 26/1/04

VERSUS

RESPONDENTS :

1. The State of Chhattisgarh
Through :- Secretary
Triable Welfare Department,
D.K.S. Bhawan, Raipur (C.G.)

2. The Commissioner
Triable Welfare Deprtment
D.K.S.Bhawan Raipur (C.G.)

3. District Education Officer
Korba (C.G.)

4. Smt. Indu Agrawal
W/o. not known,
occupation-Lecturer (Hindi)
Govt. Higher Secondary School
Bhilai Bazar , Distt. Korba (C.G.)

WRIT PETITION U/A 226/227 OF THE

CONSTITUTION OF INDIA

The petitioner most respectfully begs to prefer

(68)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

W.P.NO.4102/2004

Ku. Laxmi Navrang

-Vs-

State of Chhattisgarh and others

Miss Sofia Khan, counsel for the petitioner.

Shri Yashwant Singh, Government Advocate for the State/respondents 1, 2 & 3.

Shri B.D.Guru, counsel for respondent 4.

O R D E R
(23.02.2005)

(1) The petitioner is a Lecturer. She has challenged her transfer from Govt. Higher Secondary School Korba to Govt. Higher Secondary School, Bhilai Bazar. She has made allegations that in fact the transfer order was not received by her and she could come to know about her transfer on 25.9.2004 when a news item was published in newspaper Dainik Bhaskar.

(2) It is submitted that the petitioner was performing well in her institution and the results in her subject i.e. Hindi were always good. It is also submitted that no adverse remarks regarding the work performance of the petitioner were there, even after this, the petitioner has been transferred. It is further submitted that the

petitioner is an unmarried lady aged about 51 years and she is not having a good health condition. She is suffering from high blood pressure and diabetes and she is being regularly treated by the doctors at Korba. She has also annexed a Medical Certificate as Annexure P-2. It is submitted that the transfer is against the policy issued by the State. It is also submitted that the promotion of the petitioner is already due and she is likely to be promoted by the next year as per her seniority and if she is transferred from her present place of posting, her seniority would be affected.

(3) The State has entered appearance and has filed joint return on behalf of respondents no.1 to 3. The State has denied the material facts. It has been contended that the transfer has been made on administrative ground and the petitioner has not been able to plead or substantiate about the malafide, arbitrariness or any other illegality in the order of transfer, therefore, the writ petition filed by the petitioner should be dismissed.

(4) Along with the return, the State has also filed a copy of the transfer order dated 24.9.2004 which in fact, is a general transfer order pertaining to 33 persons. In the said order, the name of the petitioner finds place at serial number 30.

(5) Return has also been filed on behalf of the respondent no. 4. She has stated that the transfer order has been issued on the

administrative grounds and in pursuance of the aforesaid order, she had already joined at her new place of posting i.e. Govt. Higher Secondary School, Korba. She has also prayed for dismissal of the petition.

(6) I have heard the learned counsel for the respective parties at length and have also perused the records.

(7) First of all, the point of writ jurisdiction of the Court as to interfere in the order of transfer is to be considered. In the series of judgments, the Apex Court has held that the transfer is an incidence of service and is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer. Referring to the decisions reported in ***1995 (Suppl) 4 SCC 169 (Ambani Kanta Ray –Vs- State of Orissa)*** and ***AIR 1993 S.C. 2444 (Union of India –v- S.L. Abbas)***, the apex Court has laid down this law in the matter of ***Kendriya Vidyalaya Sangathan –Vs- Damodar Prasad Pandey and others reported in 2004 AIR S.C.W. 5563.*** In this judgment itself, the apex Court in latter part of para 4 mentioned the observations rendered in the matter of ***Union of India & others –Vs- Janardan Debanath and another (2004) 4 SCC 245*** that :-

"No government servant or employee of a public undertaking has any legal right to be

> *posted for ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/ management, as against such orders passed in the interest of administrative exigencies of the service concerned".*

The apex Court further referred to the decision reported in the matter of ***National Hydroelectric Power Corpn. Ltd., -vs- Shri Bhagwan, (2001) 8 SCC 574***.

(8) The above series of judgments pronounced by the apex Court at various points of time go to show that a very limited scope is given for interference with an order of transfer passed by the competent authority. If the jurisdiction and the authority are not challenged nor there is any challenge on the ground of violation of any statutory rules then unless the malafide, arbitrariness or extraneous considerations are established by coming forward with definite pleadings and by bringing some evidence on record, it cannot be said that the transfer which has been shown to be purely on the administrative exigency will not be accepted to be a normal transfer.

(9) In the present case, it is admitted that the petitioner was working in Korba since the year 1994. The petitioner has not raised any ground of either malafide or arbitrariness on the part of the authorities concerned. She has only raised the ground that the order is in violation of the policy i.e. the guidelines issued for the transfer.

(10) I have already referred to the decision rendered in the matter of ***Union of India and others, Appellants v. S.L.Abbas, Respondent (AIR 1993 SC 2444)*** in which Hon'ble the Apex Court has held that the guidelines issued by the Government do not confer upon any employee legally enforceable right. The order of transfer made even without following the guidelines cannot be interfered with by the Court unless it is visited by malafide or is made in violation of statutory provisions.

(11) In the present matter, as stated above, the ground raised that the policy has not been complied with, is no ground for interference by this Court. About the personal difficulties of the petitioner like unsound health etc. this Court can only say that to consider the grievances of above nature, employee may make suitable application/representation to the employer and the employer should decide the same in accordance with law.

(12) This Court is not inclined to interfere in the matter of such transfer in which neither the malafide nor arbitrariness is pleaded or established nor the transfer is shown to be in violation of any statutory Rules. The petition has no merits and the same is dismissed.

Sd/-
Sunil Kumar Sinha
Judge

23.02.2005

/Sunita/